

SENATE BILL No. 400

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-1-6.

Synopsis: Presumption of worker status. For purposes of minimum wage, frequency of wage payments, wage claims, employee breaks, worker's compensation and occupational diseases compensation, unemployment compensation, the Indiana Occupational Safety and Health Act, and civil rights enforcement, establishes a presumption that a worker is an independent contractor if certain conditions are met. Provides that the presumption may be rebutted with competent evidence and that a meeting or hearing held to rebut the presumption may be held as an executive session under the public meetings law. Provides that, if a worker does not satisfy the conditions and the presumption does not apply to the worker, a presumption is not created that the worker is an employee.

Effective: July 1, 2016.

Boots

January 12, 2016, read first time and referred to Committee on Pensions & Labor.



PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

SENATE BILL No. 400

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 22-1-6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

Chapter 6. Presumption of Independent Contractor Status

Sec. 1. This chapter applies to the following statutes:

- (1) IC 22-2-2 (minimum wage).
- (2) IC 22-2-5 (frequency of wage payments).
- (3) IC 22-2-9 (wage claims).
- (4) IC 22-2-14 (employee breaks).
- (5) IC 22-3 (worker's compensation and occupational diseases compensation).
- (6) IC 22-4 (unemployment compensation).
- (7) IC 22-8-1.1 (Indiana Occupational Safety and Health Act).
- (8) IC 22-9-1 (civil rights enforcement).

Sec. 2. As used in this chapter, "foreign national" has the meaning set forth in 52 U.S.C. 30121.

Sec. 3. For the purpose of determining whether a worker is an



employee or an independent contractor, a worker is presumed to be an independent contractor if the following conditions are met:

(1) This subdivision does not apply to a foreign national. The worker:

(A) possesses or has applied for an employer identification number or Social Security number; or

(B) has filed an income tax return with the Internal Revenue Service for the immediately preceding calendar year for a business or earnings from self-employment.

(2) The worker is required by agreement with the person for whom the worker performs services to:

(A) hold any necessary state or local business licenses; and

(B) maintain any necessary occupational licenses, insurance, or bonding.

(3) The worker satisfies at least three (3) of the following conditions:

(A) The worker has control and discretion over the means and manner of the performance of the work rather than following the instructions of the person for whom the worker performs services, except that the person for whom the worker performs services may require the worker to comply with any statutory, regulatory, or contractual obligations that apply to the person.

(B) The worker controls the time of the performance of the work, except for an agreement with the person for whom the worker performs services concerning the schedule for completion of the work, a range of work hours, and if the work is entertainment, the time at which the entertainment is presented.

(C) The worker is not required to work exclusively for one (1) person unless:

(i) a law, rule, or ordinance prohibits the worker from providing services to more than one (1) person; or

(ii) the worker has entered into a written agreement to provide services to only one (1) person for a limited time period.

(D) The worker may hire, supervise, and pay assistants to help with performing the work.

(E) The worker makes a substantial investment in the worker's business, such as:

(i) purchasing or leasing tools, material, and equipment for the performance of the work;



(ii) obtaining a license or other permission to access any work space of the person for whom the worker performs services in order to perform the work that the worker has agreed to perform; or

(iii) leasing work space from the person for whom the worker performs services in order to perform the work that the worker has agreed to perform.

A determination as to whether a worker's investment is substantial under this clause must be made on the basis of the income received by the worker, the equipment commonly used, and the expenses commonly incurred in the trade, profession, or industry in which the worker works.

Sec. 4. (a) The presumption under section 3 of this chapter may be rebutted by competent evidence.

(b) A meeting or hearing to rebut the presumption under section 3 of this chapter may be held as an executive session under IC 5-14-1.5-6.1(b)(1).

Sec. 5. If a worker does not satisfy at least three (3) of the conditions listed in section 3(3) of this chapter and is not presumed to be an independent contractor under section 3 of this chapter, a presumption is not created that the worker is an employee.

